

~~Rule 4-611. Probable cause determinations for purposes of detention.~~

~~Intent:~~

~~To establish a uniform procedure for conducting probable cause determinations for the purpose of determining whether a person arrested without a warrant is to be detained.~~

~~Applicability:~~

~~This rule shall apply to all trial courts except the Juvenile Court.~~

~~Statement of the Rule:~~

~~(1) In order to detain any person arrested without a warrant, as soon as is reasonably feasible but in no event longer than 48 hours after the arrest, a determination shall be made as to whether there is probable cause to continue to detain the arrestee. The determination may be made by any magistrate, although if the arrestee is charged with a first degree felony or a capital offense, the magistrate may not be a justice court judge. The arrestee need not be present at the probable cause determination.~~

~~(2) A written probable cause statement shall be presented to the magistrate, although the statement may be verbally communicated by telephone, telefaxed, or otherwise electronically transmitted to the magistrate.~~

~~(A) A statement which is verbally communicated by telephone shall be reduced to a sworn written statement prior to submitting the probable cause issue to the magistrate for decision. The person reading the statement to the magistrate shall verify to the magistrate that the person is reading the written statement verbatim, and shall write on the statement that person's name and title, the date and time of the communication with the magistrate, and the determination the magistrate directs to be indicated on the statement.~~

~~(B) If a statement is verbally communicated by telephone, telefaxed, or otherwise electronically transmitted, the original statement shall, as soon as practicable, be filed with the court where the case will be filed.~~

~~(3) The magistrate shall review the probable cause statement and from it determine whether there is probable cause to continue to detain the arrestee.~~

~~(A) If the magistrate finds there is not probable cause to continue to detain the arrestee, the magistrate shall order the immediate release of the arrestee.~~

~~(B) If the magistrate finds probable cause to continue to detain the arrestee, the magistrate shall immediately make a bail determination. The bail determination shall coincide with the~~

~~recommended bail amount in the Uniform Fine/Bail Schedule unless the magistrate finds substantial cause to deviate from the Schedule.~~

~~(4) The presiding district court judge shall, in consultation with the Justice Court Administrator, develop a rotation of magistrates which assures availability of magistrates consistent with the need in that particular district. The schedule shall take into account the case load of each of the magistrates, their location and their willingness to serve.~~

~~(5) Nothing in this rule is intended to preclude the accomplishment of other procedural processes at the time of the determination referred to in paragraph (1) above.~~